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OGC HAS REVIEWED.

007 14 1955

MEMORANDUM FOR : Chief, FE Division

THROUGH : Chief, Medical Staff
Comptroller
Office of General Counsel

SUBJECT : Medical Aspects of Contractual
Arrangements and Responsibilities

1. Reference is made to a report of survey of Agency medical installations in the Far East prepared by the Chief, Medical Staff and received in the Office of Personnel 8 August 1955. Under a section of the report entitled "INDIVIDUAL STATION REPORTS", sub-section [REDACTED], page 5, the following comment appears:

"Representatives of the Office of Personnel, General Counsel, and Office of the Comptroller expressed interest in medical aspects of contractual arrangements and responsibilities. It was agreed that the entire area of rights and benefits stemming from contract required clarification. The subject will be brought to the attention of the Director of Personnel."

2. While it is difficult in the absence of specifics to provide information which we can be sure will be of assistance to the individuals concerned, we are setting forth below certain basic considerations relating to contracts containing provision for medical and disability benefits. We are routing this memorandum through the offices indicated above for the addition of any comments which they may regard as pertinent.

a. Independent Contractor

(1) A contract or a field agent is an individual performing services for CIA under uncontrolled and unsupervised conditions. He is in law an independent contractor. As such, any rights,

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privilege or benefit accruing to him as the result of negotiation between both parties concerned - no legal entitlements are involved other than those agreed to. This is especially important in the area of medical and disability benefits. The Agency's legal obligation to an independent contractor must be found in the terms of the contract. The Confidential Funds Regulation covering injury, disability and death payments to contract agents states, "The contracts shall stipulate any sickness, injury and death benefits which may be paid the individual or his survivors." (Emphasis supplied.) This underlying philosophy has been more clearly set forth in a proposed regulation concerning contract agents. It provides in part, "The Agency's obligations for any sickness, injury or death benefits which may be paid to the individual or his survivors must be specifically stated in the contract."

(2) The CFRs' state that prior Headquarters' approval must be obtained for promises of compensation for illness, injury and death benefits for field agents (foreign nationals). The proposed regulation continues this policy.

(3) It must be emphasized that the Agency has no legal obligation to afford medical benefits to an independent contractor unless specifically provided in the contract. It is recognized that the Agency has assumed medical responsibility or incurred medical expenses for individuals when there was no legal obligation so to do, but these have been justified as essential operational expenses. It should also be noted that in the absence of a governing provision in the contract, Agency regulations do not control or preclude the provision of medical treatment to contract personnel by Agency medical facilities or medical facilities of other U. S. Government agencies in the area, when this is deemed appropriate for operational reasons.

b. Contract Employee

A contract employee is an individual working for CIA under controlled and supervised conditions (normally by a staff employee or staff agent). This relationship creates for the employer legal obligations in the field of medical disability and death payments. The Government's legal

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obligation in this employee-employer situation is set forth in the Federal Employees' Compensation Act, which provides that when an employee of the Government incurs a sickness, illness, injury or dies in the performance of his duties, he or his survivors are entitled by law to certain stated benefits. Again it is stressed that this is a legal entitlement evolving from the basic legal relationship between CIA as the employer and the contract individual as the employee. All contract employees (full or part-time) are entitled by law to this coverage regardless of what is stated in the contract of employment. Both the CFRs' and the proposed regulation on contract employees recognize this legal entitlement and state in effect that a clause concerning this entitlement shall be set forth in every employee type contract.

c. Processing of Claims

- (1) When an independent contractor whose contract provides for disability benefits is injured and presents a claim to CIA for payment, the claim will be processed internally by CIA and the expenses incurred thereunder will normally be chargeable to the project under which the man was utilized at the time of injury.
- (2) When an FECA claim arises out of an employee-employer relationship, two courses of action present themselves. The claim may be presented in conformance with Agency regulations and policies to the Bureau of Employee Compensation for adjudication and/or payment, or if required for some special reason, usually security or cover, the claim may be adjudicated and paid internally by CIA utilizing the same standards and criteria that the BEC would have utilized were they requested to act upon the same case.

3. The comments set forth above are of necessity general in nature. It is suggested that pertinent extracts of the above be paraphrased for pouching to the field and that specific field inquiries on the medical aspects of contractual arrangements and responsibilities be invited. Upon receipt of such specific inquiries, we shall be glad to amplify our comments.

SIGNED


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Special Contracting Officer

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J. R. BURGER

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